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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,356	03/29/2001	Jens Kircher	1504	1171
7590	04/21/2004		EXAMINER	
Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			BROWN, VERNAL U	
			ART UNIT	PAPER NUMBER
			2635	10

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/806,356	KIRCHER, JENS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vernal U Brown	2635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 February 2004.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 18-27 and 29-37 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 18-27 and 29-37 is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

This action is responsive to communication filed on February 4, 2004.

### *Response to Amendment*

The examiner has acknowledged the amendment of claims 18-27, 29-34, the cancellation of claim 28 and the addition of claim 35-37.

### *Response to Arguments*

Applicant's arguments filed February 4, 2004 have been fully considered but they are not persuasive.

Regarding applicant's argument regarding the controller not associated with a position determining device, Borgstahl et al. teaches communication between the data terminal and the household control system formed by the device 20 is based on proximity (col. 5 lines 43-45). The proximity detection (col. 5 lines 16-20) represents position determining as defined by the specification (page 7 line 26-page 8 line 3) because position detection as described by the specification consist of determining when the controller device is within a certain range of the device to be controlled. The mobile terminal therefore inherently includes a position determining device, which determines the proximity of the remote control to the device to be controlled. Borgstahl et al. teaches communication between the peer and the remote device is established using various means including PSTN and various communication links (col. 5 lines 31-42) and further state that physical proximity rather than unique address is used to initiate connection.

Applicant's arguments with respect to the reference of Hashimoto have been considered but are moot in view of the new ground(s) of rejection.

Regarding applicant's argument regarding the reference of Joao, the reference of Joao is relied upon for teaching a mobile data terminal (figure 1) disposed in a vehicle and control vehicle function and household appliance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Claims 18-21, 23, 29-31, and 35-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Borgstahl et al. U.S Patent 5909183.

Regarding claims 18 and 29, Borgstahl et al. teaches a method for constructing a data connection between an integrated household control system (figure 1) and a mobile data terminal (34) located outside the base of the integrated household control system (col. 5 lines 38-44). Borgstahl et al. teaches communication between the data terminal and the household control system formed by the device 20 is based on proximity (col. 5 lines 43-45) which further represents the automatic construction of the data connection with the integrated household control system if one reaches a predetermined region surrounding the household control base. The proximity detection (col. 5 lines 16-20) represents position determining as defined by the specification (page 7 line 26-page 8 line 3) because position detection as describe by the specification consist of determining when the controller device is with a certain range of the

device to be controlled. The mobile terminal therefore inherently include, a position determining device, which determines the proximity of the remote control to the device be controlled.

Regarding claim 19, Borgstahl et al. teaches the data connection between the data terminal and the integrated household control system is constructed via a mobile radio network (col. 5 lines 38-41).

Regarding claim 20, Borgstahl et al. teaches the data connection between the data terminal and the integrated household control system is constructed via the internet (col. 9 lines 62-66).

Regarding claim 21, Borgstahl et al. teaches the household control system transmits alarms to the controller (col. 15 line 65-col. 16 line 3). The communication between the household control system and the data terminal is based on a request followed by a response protocol as shown in figure 21 (data is not simultaneously transmitted from the household control system and the data terminal). Therefore data is transmitted from the household control system to the data terminal when there is no existing connection in the opposite direction.

Regarding claim 23, Borgstahl et al. teaches the use of a peer-to-peer device as the data terminal (col. 5 lines 42-45) and further teaches the use of a computer as the peer-to-peer device (col. 4 lines 1-4). Borgstahl et al. therefore teaches the use of a computer as a data terminal.

Regarding claim 30, Borgstahl et al. teaches the data terminal (34) communicating with the household control system based on proximity (col. 5 lines 38-44) and the remote device send

data to the household control system (20) as shown in task 96 and task 98 of figure 10. Borgstahl et al. further teaches an example of a remote device controlling an appliance in which the remote controller displays available commands and the corresponding icons associated with the commands (col. 16 lines 24-27). The computer program that allows the display of the available command is considered a browser and Borgstahl et al. further teaches communication by the internet (col. 9 lines 62-66).

Regarding claim 31, Borgstahl et al. teaches a wireless network (col. 3 lines 65-67) and mobile (portable) station (col. 4 lines 41-45).

Regarding claims 35-37, Borgstahl et al. teaches a method (figure 17) for constructing a data connection between an integrated household control system and a data terminal (col. 13 lines 32-35) comprising coupling the data terminal with a mobile positioning determining device evidenced by the data terminal detecting its proximity to a device to be controlled (col. 5 lines 43-45), wherein the data terminal (121) is mobile (col. 13 line 36), and controlling the data terminal by the position determining device in such a way that if the distance from the household control base reaches a predetermined region surrounding the household control base (col. 13 lines 35-36), automatically initiating the construction of the data connection with the integrated household control system via a mobile interface of the data terminal (col. 13 lines 36-40).

Borgstahl et al. further teaches an example of a remote device controlling an appliance in which the remote controller displays available commands and the corresponding icons associated with the commands (col. 16 lines 24-27). The computer program that allows the display of the

available command is considered a browser and Borgstahl et al. further teaches communication by the internet (col. 9 lines 62-66).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22, 24, 25, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borgstahl et al. U.S Patent 5909183 in view of Joao U.S Patent 5917405.

Regarding claims 22 and 24, Borgstahl et al. in view of Hashimoto et al. teaches the use of a computer as a data terminal (col. 4 lines 1-4) but is silent on teaching the mobile data terminal is disposed in a motor vehicle and also serve to control motor vehicle function. Joao in an art related control system invention teaches a mobile data terminal (figure 1) disposed in a vehicle and control vehicle function and household appliance (col. 5 lines 52-67).

It would have been obvious to one of ordinary skill in the art for the mobile data terminal is disposed in a motor vehicle and also serve to control motor vehicle function in Borgstahl et al. in view of Hashimoto et al. as evidenced by Joao because Borgstahl et al. in view of Hashimoto

Art Unit: 2635

et al. teaches the use of a computer as a data terminal and Joao teaches a mobile data terminal disposed in a vehicle and control vehicle function and household appliance.

Regarding claims 25 and 32, Borgstahl et al. teaches the use of a data terminal to transmit control information (figure 21) but is silent on teaching an Internet telephone serves as the data terminal. Joao in an art related control system invention teaches the use of a telephone as a data terminal (col. 72 line 56-col. 73 line 7) for connecting to a household control system.

It would have been obvious to one of ordinary skill in the art to have a telephone serve as the data terminal in Borgstahl et al. in view of Hashimoto et al. as evidenced by Joao because Borgstahl et al. in view in view of Hashimoto et al. suggests the use of a data terminal to transmit control information to household control system and Joao teaches the use of a telephone as a data terminal for connecting to a household control system.

Claims 26-27 and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borgstahl et al. U.S Patent 5909183 in view of Glehr U.S Patent 5723911.

Regarding claims 26 and 33, Borgstahl et al. teaches a navigation device which determines the proximity of the remote control to the device be controlled (col. 5 lines 16-20) but is silent on teaching at least one component of the navigation device serves as a position determining device. Glehr in an art related controller device teaches portable device having a component that serves as a position determining device in order to determine the location of the vehicle (col. 3 lines 65-67).

It would have been obvious to one of ordinary skill in the art for the navigation device serves as a position determining device in Borgstahl et al. as evidenced by Glehr because Borgstahl et al. suggests a navigation device for determining the proximity of the remote control

to the device be controlled and Glehr teaches a navigation device with a position determining device in order to determine the location of the vehicle.

Regarding claims 27 and 34, Borgstahl et al. teaches the mobile of system (figure 2) uses RF communication (col. 14 line 47) therefore the mobile system is considered a mobile radio system but is silent on teaching at least one component of the radio device serves as a position determining device. Glehr in an art related controller device teaches portable device having a component that serves as a position determining device in order to determine the location of the vehicle (col. 3 lines 65-67).

It would have been obvious to one of ordinary skill in the art for the radio device serves as a position determining device in Borgstahl et al. as evidenced by Glehr because Borgstahl et al. suggests a radio device for determining the proximity of the remote control to the device be controlled and Glehr teaches a radio device with a position determining device in order to determine the location of the vehicle.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Art Unit: 2635

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vernal U Brown whose telephone number is 703-305-3864. The examiner can normally be reached on M-Th, 8:30 AM-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik can be reached on 703-305-4704. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4750.



Vernal Brown

April 14, 2004

MICHAEL HORABIK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

